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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,819	07/29/2003	Daniel Robert Blakley	10017340-7	8130

7590 03/02/2004  
HEWLETT-PACKARD COMPANY  
Intellectual Property Administration  
P. O. Box 272400  
Fort Collins, CO 80527-2400

EXAMINER

BUI, BRYAN

ART UNIT	PAPER NUMBER
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2863

DATE MAILED: 03/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/630,819

Applicant(s)

BLAKLEY, DANIEL ROBERT

Examiner

Bryan Bui

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-15,17-19,22-25 and 27-30 is/are rejected.
- 7) ☒ Claim(s) 2,5,16,20,21,26 and 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 72903.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 3-4, 6, 8-10, 14-15, 17-19, 22-24, 27-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Niemiec et al. (U.S. Patent No. 6,411,567).

Niemiec et al teach a method and apparatus having a supply of medication in a container for determining the expiration date of a medication (e.g. figure 3 and column 2, lines 52+); temperature sensor for measuring the temperature data (e.g. figure 4, item 408); a programmable real time clock (e.g. figure 4, item 308); a controller programmed with temperature profile data for integrating (processing, comparing) temperature data and the temperature profile data to generate the expiration date (e.g. column 5, lines 33+ and column 6, lines 25-60). Niemiec et al further teach a programmable interface operative to controller so that time data and medication temperature profile data may be programmed into controller (e.g. column 6, lines 1-40); displaying the perceptible information corresponding to the expiration date (e.g. column 6, lines 29-36); providing alert of an medication expiration condition based on calculated temperature data with

the threshold value (e.g. column 3, lines 19-29). It is noted that identifying expiration date of medication is anticipated in the meaning of term "potency condition" to provide the safety for patient.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7, 11-13, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niemiec et al. (U.S. Patent No. 6,411,567) as applied to claims rejection above, and further in view of Rocci, Jr. et al (U.S. Patent No. 5,676,129).

Niemiec et al teach the features of the instant claims, except discloses a metered dose inhaler having a drop generator for generating droplets of medication and expel the droplet through a mouthpiece, which relies under control of the controller and increasing the doses of medication. Rocci et al. teaches a method and apparatus for directly counting the number of doses expended from a Metered Doses Inhaler for determining the droplets of medication in case of medical delivery devices such as inhalers having drop generator and providing dose counter for increasing the doses of medication (e.g. column 4 lines 33-50, column 6, lines 33-67 and figures 1-2). It would have been obvious to one of the ordinary skill in the art to modify a Niemiec et al system with a forementioned teaching of Rocci et al. The motivation for doing so would allowed

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the system more precise manner for generating the droplets medication based on the controller of switches.

***Allowable Subject Matter***

5. Claims 2, 5, 16, 20, 21, 26 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan Bui whose telephone number is 571-272-2271. The examiner can normally be reached on M-Th from 7am-4pm, and Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E Barlow can be reached at 571-272-2269. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**BRYAN BUI**  
**PRIMARY EXAMINER**

BB  
2/12/2004